DISMISSAL DUE TO BUSINESS REASONS
CONCLUSIONS

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Abstract

The Comparative Labor Dossier (CLLD) in this issue 1/2018 of IUSLabor is dedicated to dismissals due to business reasons. Aside from Spain, renowned academics and professionals from the following countries have participated in this publication: Belgium, France, Italy, Germany, Greece, Portugal, Argentina, Brazil, Colombia, Costa Rica, Dominican Republic, Uruguay and Canada. The following pages contain the 10 main conclusions reached in the comparative study. Nevertheless, it is highly recommended the detailed reading of the pertinent chapters to better understand the conclusions here indicated. Likewise, you will find attached to the conclusions a summary table with the answers of the different legal regimes to each one of the questions on dismissals due to business reasons analysed in this issue of IUSLabor.

El Comparative Labor Law Dossier (CLLD) de este número 1/2018 de IUSLabor está dedicado a los despidos por causas empresariales. Además de España, en esta publicación han participado académicos y profesionales de reconocido prestigio de los siguientes países: Bélgica, Francia, Italia, Alemania, Grecia, Portugal, Argentina, Brasil, Colombia, Costa Rica, República Dominicana, Uruguay y Canadá. En las siguientes páginas hemos incluido las 10 conclusiones principales que hemos alcanzado. No obstante, recomendamos encarecidamente una lectura detallada de los capítulos correspondientes para una mejor comprensión de los puntos aquí señalados. Asimismo, las conclusiones vienen acompañadas de un cuadro-resumen con las respuestas de los distintos ordenamientos jurídicos a cada una de las preguntas sobre despidos por causas empresariales analizadas en este número de IUSLabor.

Título: Despidos por causas empresariales. Conclusiones.

Keyworkds: dismissals, redundancies, business causes, severance pay.
Palabras clave: despido, despido colectivo, causas empresariales, indemnización.

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Summary

1. «Top ten» conclusions

The comparative Labor Law Dossier (CLLD) in this issue 1/2018 of IUSLabor is dedicated to the regulation of different legal regimes on dismissals due to business reasons. It includes, therefore, several articles realised by well-known academics and professionals on the regulation on collective redundancies and dismissals due to business reasons in Belgium, France, Italy, Germany, Greece, Portugal, Spain, Argentina, Brazil, Colombia, Costa Rica, Dominican Republic, Uruguay and Canada.

The CLLD emanates from the following questions answered by the international advisors of the journal*:*

1. How are the causes that justify a redundancy or a dismissal due to business reasons defined?
2. The business reasons that justifying the dismissal, must they concur in the entire company or only concur in the workplace where dismissal occurs?
3. What is the procedure that the company must follow to conduct a dismissal for business reasons? Are there specialties in such procedure in cases of redundancies (that is, when there is a collective dismissal)?
4. How is the number of affected workers calculated in order to determine the individual or collective nature of the dismissal?
5. Are there groups of workers who have priority in a dismissal for business reasons? Particularly, do workers´ representatives have priority? And pregnant workers? Elder workers? Workers with family responsibilities?
6. Are there workers affected by a dismissal due to business reasons entitled to an economic compensation?
7. What obligations does the company that carries out a dismissal due to business reasons have? In particular, is there the obligation to relocate affected workers within the company or the group of companies?
8. What are the consequences that arise from breach or non-compliance with the legal procedure regarding dismissals due to business reasons? In which cases is that dismissal considered null (that is, that implies the worker´s readmission)?
9. Are there specialties in the dismissal due to business reasons for microcompanies and/or small and medium enterprises?
10. It is possible to conduct a dismissal due to business reasons in a public administration? In this case, what specialties exist in regard to the definition of the business causes?

Following, and in the same order of the above questions, the reader will find the 10 main conclusions reached on the grounds of the answers given by the different academics and professionals in matters of dismissals due to business reasons.

1. All legal regimes analysed in the present paper of comparative law **allow dismissals due to business reasons.**

The different **European legal regimes** analysed foresee **dismissals due to business reasons** as a way of extinction of the labour relationship. Normally, business reasons are defined as **economic, technical, organisational and productive reasons**. Nevertheless, it is necessary to note that, as it may be natural, each legal regime has its particularities. If we focus in stablishing a thorough comparation, the country that sets business reasons more similarity to **Spain** is **France**. In both countries economic reasons are defined as the existence of losses and/or a significant decrease in orders or turnovers and, in both cases, the significative decrease is quantified; in **Spain**, it concurs when the decrease occurs during three consecutive trimesters and in **France** when it exist between one or four consecutive trimesters, depending on the size of the company. Different from the Spanish legislation we find countries such as **Germany**, **Greece**, **Italy** and **Portugal** that understand the dismissal as an *ultima ratio*. That is, the company is only entitled to dismiss a worker if it is impossible to adopt a less burdensome measure, as substantial modification of working conditions, relocations, reduction in working time, etc.

In the **countries analyzed in central and South America**, the majoritarian trend is the legal definition of entrepreneurial reasons. However, the meaning attributed in each legal system varies considerably. Hence, several matters are included under the label of entrepreneurial reasons: entrepreneurial, technological or economic issues (**Argentina**, **Chile** and **Colombia**), others more specific as *force majeur*, reduction or lack of work (**Argentina**), depletion of raw materials (**Dominican Republic**), suspension of entrepreneurial activities for specific periods (**Colombia** and **Costa Rica**), or the beginning of dissolution and liquidation of the company (**Colombia**, **Chile** and **Dominican Republic**). In the region, there is a group of legal systems where the concept is not developed, since the dismissal related to this cause (and any other) lead to the obligation to pay for an economic compensation (**Brazil**, **Costa Rica** and **Uruguay**).

At the other extreme we find **Canada**, whose legal regime recognises dismissal without cause and, therefore, does not specifically regulate dismissals due to business reasons.

2. As mentioned previously, the relative similarity that could exist between **European countries** regarding the definition of the causes dissipates when we talk about the scope in which these causes must concur (company vs. workplace/establishment). **Belgium**, **Germany** and **Greece** allow dismissals in any unit of measurement. On the contrary, **France** and **Italy** only permit dismissals if the alleged cause concurs at the level of the company. Finally, in **Spain** and **Portugal**, economic causes must concur in the company, whereas other causes may concur at the level of the workplace or autonomous entity.

In this point there are two patterns in the **South and Central American countries** which set rules related to the matter. In the first place, the **Argentinian legal system** establishes that the economic reasons must concur at the enterprise level. Nevertheless, in the rest of the countries where the definition of such causes is included in the legal system (**Chile**, **Colombia** and **Dominican Republic**), they can occur either at the enterprise level or at the establishment level. The comparative study has proven useful to find a certain degree of uncertainty on this specific matter within the region.

3. Regarding the **regulation on the proceeding of dismissals due to business reasons**, there is a **big disparity among legal regimes**.

All European countries stablish a specific proceeding for collective dismissals or redundancies. This is due to the **Council Directive 98/59/EC** of July 1998 on the approximation of the laws of the Member States relating to collective redundancies. **The most relevant similarities** are: the use of numerical and temporal thresholds to ascertain whether the dismissal proceeding is collective or individual, the perceptive participation of workers' representatives and the participation of the public authority in the proceeding.

From these premises, however, each State regulates their proceeding differently, being ones more protective than others. For example, States that seem to have a more protective collective redundancy proceeding for workers are **Belgium** and **Italy**. In **Belgium**, after a 30-day period of negotiations, if workers' representatives made justified objections regarding a procedural issue, the company must restart the proceeding. Likewise, in **Italy**, in case there is no agreement in the first phase of the proceeding, a second phase takes place in which parties are obliged to attend to an administrative conciliation to reach an agreement.

Regarding the participation of the public administration in collective redundancy proceedings, it is true that the labour authority has a role in the proceeding in all countries. However, except in **Italy** (where it may have an active role in case of

disagreement after the consultation period), it is a role of notification and/or supervision of the proceeding.

Finally, it is important to highlight that **all European countries** allow the employer to make **a unilateral decision related to the worker´s dismissal** once they have complied with the pertinent proceeding.
Regarding the **countries analyzed from center and south America**, the comparative study has made it possible to identify **different institutional designs**. These countries can be grouped into **three categories** with certain related similarities.

In the first place, there is a legal duty of obtaining administrative authorization to dismiss on the grounds of entrepreneurial reasons in **Colombia** and **Dominican Republic**. The procedure consists on: (i) filing a request by the employer, (ii) the verification of the assumption on which it is based and, if so, (iii) the delivery of the authorization. Although the **Argentinian legal system** also lays down an administrative process to be followed, it establishes a set of specific features, which allow to distinguish it from the other countries: (i) the procedure imposes the employer the duty of promoting subsidies to create start-ups in favor of workers eventually affected by the dismissal; and (ii) this is the only system in the region where social dialogue is used as a way to solve out controversies regarding the matter. Hence, the rules of the process establish a stage for discussion, with the possibility of bringing the conflict to a conclusion by means of agreement.

A second trend is found in **Chile**, where the process is carried out exclusively with the purpose of giving publicity, since it allows the worker and the labor inspection to know the facts and the underlying causes on which the dismissal is based.

Finally, in the **Brazilian, Costa Rican** and **Uruguayan systems** the decision of the dismissal brings about the obligation of paying for compensation at any case, therefore, there is no process to be followed to dismiss workers.

4. Concerning the calculation of affected workers to determine the collective or individual nature of the dismissal proceeding, **each legal system has its peculiarities**.

In **Europe**, these special features, by virtue of the above-mentioned Council Directive 98/59/CE, revolve around two ideas: a timeframe and a quantitative limit. That is, all countries set a time frame in which a minimum number of dismissals must be carried out. The determination of the timeframe and quantitative threshold is the issue that changes depending on the country, although there are some coincidences. For instance, the shortest time frame is found in **France**, **Germany** and **Greece**, which is of 30 days;

at an intermediate point we have **Belgium** (60 days) and **Portugal** along with **Spain** (90 days); **Italy** is located at the most extreme point with 120 days. On the other hand, regarding the quantitative thresholds, each country regulates its own values and, apart from **Italy**, all countries set their parameters according to the number of workforce of the company.

Regarding the issue related to the unit of measurement, the decisions of the European Court of Justice of May 13, 2015 (C-392/13, case Rabal Cañas), November 11, 2015 (C-422/14, case Pujante Rivera) and September 21, 2017 (-429/16, case Ciupa and C-149/16, case Socha) only had a significant impact on the **Spanish regulation** of redundancies. For example, **Portugal** only takes into consideration dismissals due to business reasons and terminations of the employment contract derived from a mutual agreement.

In **Latin-America**, the only country analyzed where collective dismissal is regulated (and, therefore, certain quantitative thresholds are applicable) is **Colombia**. In that legal system, such categorization derives from two variables: (i) the company's size (taking as reference the number of workers) and (ii) the number of workers dismissed. So, the bigger the enterprise, fewer percentage of workers are to be dismissed to consider it as a collective matter.

5. When evaluating **the group of workers** facing a collective redundancy **with retention priority** in the company, big divergences are found again among the different analysed legal regimes. Nevertheless, **all legal regimes** analysed **deny the possibility to dismiss employees on the grounds of discriminatory reasons**.

In **Europe**, the retention priority is only contemplated *sensu stricto* in **Spain** related to workers' representatives and in **Italy** associated with working mothers. In both cases, the dismissal is only permitted in case of cessation of activity. **France**, **Germany**, **Greece** and **Italy** set the obligation to evaluate workers' situations when selecting workers affected by the dismissal. In **Germany** and **Greece** this decision has to be made according to social factors and the good faith principle, respectively. Meanwhile companies in **Italy** and **France** have to follow some criteria related to family responsibilities, seniority, disabilities, etc. **Portugal** and **Spain** set an additional protection according to the personal situation of the worker; in **Portugal**, for instance, if the dismissal affects a worker on maternity leave, a report of the Commission for Equality in the Work and Employment is required; in **Spain**, the dismissal will be considered void if the cause is related to the special personal situation of the worker. Finally, **Belgium** does not foresee any priority, the exclusive peculiarity is that the proceeding to dismiss a worker's representative requires the case to be put on the

agenda of the competent labour committee which must decide on the concurrence of the causes and, afterwards, the worker's representative must file his or her case before the president of the labour tribunal who has to recognise the existence of the causes.

In all South and Central American countries analyzed, there exists the above-mentioned priority, although this is established as a matter of general protection afforded by labor law. According to those provisions, specific groups of workers are protected from dismissal (no matter the cause that justifies it), such as: pregnant women (and after birth), employees with specific family responsibilities or union representatives.
Nevertheless, some systems stand out over the rest: the **Argentinian**, where a ranking of preferences based on seniority and the amount of family responsibilities is set in case of dismissal due to reduction of work; the **Chilean,** which specifically prohibits the dismissal of workers in case of sickness (common or professional) and work accident; the regulation of public employment in **Costa Rica**, where some undefined criteria of selection are laid down; and, finally, the **Dominican** system, where a categorization exists based on nationality and marital status.

6. Unanimity is **nearly achieved among countries** analysed in recognising a severan**ce pay** to workers dismissed for business reasons.

Among **European countries**, nevertheless, unanimity is broken by **Germany**, where severance pay is only recognised in cases of wrongful dismissal. In any case, the determination of the severance pay varies depending on the legal regime; however, most countries ascertain the value in accordance with two variables: salary and seniority.

Similarly, **in all the countries of the center and South of America**, the right to obtain an economic compensation arises for employees in case of dismissal due to business reasons. However, in the **majority of cases** such compensation emerges from the dismissal itself, not from the connection with business reasons. The amount of the compensation is calculated according to the rules established for unjustified dismissals. The **Chilean and Argentinian systems** deviate from this trend since they establish different compensations when business reasons are alleged as justification for contract extinction. A similar institutional design exists in the **Dominican Republic**, where the compensation varies according to seniority.

In **Canada** compensation is only recognised when the notice of the dismissal is not respected and for workers with more than five years seniority.

7. Additionally to the obligations derived from the collective redundancy proceeding analysed in question 3, some countries stipulate **additional obligations** for employers.

Redundancy plans are a reality in certain **European countries**: whereas in **Belgium** they are not mandatory, they are in **France** if the dismissals due to business reasons affects more than 10 employees. In **Spain** an external relocation plan (that is, a plan contracted with an external company with measures to facilitate the finding of a new job) must be made when the dismissal affects more than 50 workers, whereas in **Belgium** it is mandatory if the redundancy affects workers older than 45 years. In **Spain**, this external plan is different from a collective dismissal plan, since the former has to be contracted with an external company, while the latter contains measures conceded by the company itself. Additionally, in **Spain**, a special contribution has to be made to the Treasury if the dismissal affects workers older than 50 years. This special contribution has also to be made in **Italy**, independently of the age of dismissed workers.

It is necessary to point out that **Belgium** and **Spain** are the only European countries analysed that do not have a relocation obligation. Independently on the configuration, the rest of European countries analysed do foresee this obligation. In **Germany** and **Greece**, for instance, the dismissal is seen as *ultima ratio*, so the employer has to take all available measures to avoid the dismissal, including, therefore, the relocation of workers. On the other hand, **France** expressly recognises the right to relocation of workers affected by the dismissal.

The situation is the opposite in the analyzed countries of South and Central America. In the majority of them, the only obligation that arises from dismissals due to business reason is payment of an economic compensation, so there are no legal regulations that impose additional obligations burdens for employers. In particular, **none of the systems establishes the obligation to relocate affected workers within the company or the group of companies.** Hence, this sort of entitlement emerges usually from collective bargaining or Corporate Social Responsibility (CSR).

The only exceptions can be found in **Colombia**, in cases of contract extinction due to suspension of activities and company close down), and the **Dominican Republic** (public employment), which regulate worker's right to be preferentially admitted to fill positions (if these are available again).

8. All **European countries** analysed foresee **consequences for companies that do not fulfil the proceeding requirements**. However, these consequences vary in the different legal systems analyzed. In most countries, they are economic sanctions based on

compensations to employees. Yet nullity and reinstatement of workers are foreseen in some cases. The latter occurs in countries such as **Germany**, **Greece**, **Italy** and **Spain**. In **Belgium** and **Portugal**, the worker has the possibility to choose between reinstatement and economic compensation. It is convenient to emphasize the fact that in **Italy**, due to recent labour reforms, the consequences of the employer´s breach of procedure are different whether the worker has been hired before or after March 7th of 2015.

Excluding the countries in **Center and South America** where no regulation of dismissal due to business reasons is established (**Brazil**, **Costa Rica** and **Uruguay**), the other countries may be grouped into two: (i) a first group, wherein non-compliance causes the imposition of economic and administrative sanctions (**Argentina** and **Chile**) and (ii) a second, where unfulfillment of related legal procedures implies the nullity of the procedure (**Colombia** and **Dominican Republic**). Notwithstanding the former, in the second group administrative and economic sanctions can also be found, and in the first group nullity of the procedure may also arise. Hence, in **Chile**, for instance, a dismissal is not effective when entrepreneurial causes concur with other circumstances, or in **Colombia** economic sanctions emerge besides nullity.

Then, in addition to the sanctions more often imposed for this kind of entrepreneurial behavior (warnings, overpayments, fines, *inter alia*), the **Argentinian system** stands out, because breach of procedure leads to disqualification for no compliance with tender conditions in public processes.

9. Beyond the numerical thresholds of a collective dismissal, the legal regimes analysed establish **little specialties for dismissals due to business reasons in micro companies and/or small and medium companies**. The two main specialties are recorded in: **France**, where the employer is obliged to suggest the worker a professional securing contract if the company has less than 1.000 workers; and **Portugal**, where small companies are entitled to refuse the reinstatement of the worker.

Similarly, **none of the countries analyzed in Center and South of America** establish specific regulations in case of dismissal due to business reasons in microenterprises and small or medium companies. The only exception is found in **Argentina,** where the government is entitled to protect workers of these companies (in case of dismissal) either by assuming the economic compensations caused for them or by funding training and reorganization actions.

10. Finally, in **most of the analysed countries it is not possible to carry a dismissal due to business reasons in the public sector**.

The great majority of the **European countries** do not permit the dismissal for business reasons of workers in the Public Administration. This is only strictly possible in **Spain**, in addition to **Canada**. In **Italy**, the dismissal is allowed if the reason of the dismissal is imputable to the worker and in **Greece** only if the job is abolished.

In the **great majority of systems in South and Central America**, rules concerning collective dismissal due to business reasons are not applicable in Public Administration. The phenomenon is generally explained by the fact that public employment is regulated by other set of rules. Nonetheless, in **Central American countries** there are equivalent legal institutions for the public sector. For instance, in the **Dominican Republic**, public positions may be subject to extinction grounded on institutional interests, and in **Costa Rica** more detailed provisions are laid down (reduction of services for lack of funds, which require to affect at least the 75% of the staff).

2. «Top ten» conclusiones

El Comparative Labor Law Dossier (CLLD) de este número 1/2018 de IUSLabor ha estado dedicado a la regulación que hacen distintos ordenamientos jurídicos de los despidos por causas empresariales. Incorpora, por tanto, una serie de artículos realizados por prestigiosos académicos y profesionales sobre la regulación de despidos colectivos y por causas empresariales en Alemania, Bélgica, España, Francia, Italia, Grecia, Portugal, Argentina, Brasil, Colombia, Costa Rica, República Dominicana, Uruguay y Canadá.

Para realizar este análisis comparativo, el CLLD se ha basado en las respuestas que los colaboradores internacionales de la revista han dado a las siguientes preguntas:

1. ¿Cómo se definen las causas que justifican un despido por causas empresariales?
2. Las causas empresariales que justifican el despido, ¿Han de concurrir a nivel de toda la empresa o pueden hacerlo solo en el centro de trabajo donde se produce el despido?
3. ¿Cuál es el procedimiento que la empresa debe seguir para proceder a un despido por causas empresariales? ¿Existen especialidades en el procedimiento de despido por causas empresariales cuando el despido tiene naturaleza colectiva?
4. ¿Cómo se calcula el número de trabajadores afectados para determinar si el despido tiene naturaleza colectiva?
5. ¿Existen trabajadores que gozan de prioridad de permanencia ante un despido por causas empresariales? En particular, ¿Tienen los representantes de los trabajadores prioridad de permanencia? ¿Las trabajadoras embarazadas? ¿Los trabajadores de mayor edad? ¿Los trabajadores con responsabilidades familiares?
6. Los trabajadores afectados por el despido por causas empresariales, ¿Tienen derecho a una compensación económica o indemnización?
7. ¿Qué obligaciones tiene la empresa que realiza un despido por causas empresariales? En concreto, ¿Existe obligación de recolocación de los trabajadores afectados en la empresa o en el grupo de empresas?
8. ¿Qué consecuencias se derivan del incumplimiento empresarial de la normativa legal sobre despido por causas empresariales? ¿En qué supuestos el despido puede ser declarado nulo (que implique la readmisión del trabajador)?
9. ¿Existen especialidades en el despido por causas empresariales para las microempresas y/o pequeñas y medianas empresas?
10. ¿Es posible el despido por causas empresariales en la Administración Pública? En su caso, ¿Qué especialidades existen en relación con la definición de las causas?

A continuación, el lector encontrará, siguiendo el orden de las preguntas anteriores, las 10 conclusiones principales alcanzadas en base a las respuestas de los diferentes académicos y profesionales en materia de despidos por causas empresariales.

1. **Todos los ordenamientos jurídicos analizados** en el presente estudio de derecho comparado **admiten el despido de trabajadores por causas empresariales**.

Los diferentes regímenes jurídicos europeos analizados prevén el **despido por causas empresariales** como una de las modalidades extintivas de la relación laboral. Normalmente, las causas empresariales equivalen a **causas económicas, técnicas, organizativas y productivas**. Sin embargo, conviene indicar que, como es natural, cada ordenamiento contiene una serie de particularidades. Si nos centramos en establecer una comparación más exhaustiva, el país que establece unas causas más similares a las **españolas** es **Francia**. En ambos países se califica como causa económica la existencia de pérdidas y la reducción significativa de pedidos o ventas y, en ambos, se cuantifica dicha reducción significativa; en el caso español cuando se produzca durante dos trimestres consecutivos y en el caso francés entre uno y cuatro trimestres consecutivos, dependiendo del tamaño de la empresa. Relativamente diferente al caso español encontramos a países como **Alemania**, **Grecia**, **Italia** y **Portugal**, que contemplan el despido como una *ultima ratio*. Esto quiere decir que la empresa solo está legitimada a despedir a un trabajador si le es imposible tomar una medida menos gravosa, como podrían ser modificaciones sustanciales de trabajo, recolocaciones, reducciones de jornada, etc.

En los **países analizados del centro y sur de América**, la tendencia mayoritaria es la definición legal de las *razones empresariales*. Sin embargo, el significado atribuido varía considerablemente dentro de cada ordenamiento. Así, bajo esta denominación se incluyen, con cierto grado de indeterminación, cuestiones de orden empresarial, tecnológico, o económico (**Argentina, Chile** y **Colombia**), u otras más específicas como la fuerza mayor o la ausencia o reducción del trabajo (**Argentina**), el agotamiento de materias primas (**República Dominicana**), la suspensión de actividades durante un periodo determinado (**Colombia** y **Costa Rica**) o el sometimiento de la compañía empleadora a procesos de disolución y liquidación (**Colombia**, **Chile** y **República Dominicana**). Destaca en la región la existencia de un grupo de ordenamientos en los que no se desarrolla el concepto, dado que el despido atribuible a esta causa genera, en todo caso, la obligación de pagar una compensación económica como contraprestación **(Brasil, Costa Rica** y **Uruguay**).

En el extremo opuesto encontramos a **Canadá**, cuyo ordenamiento jurídico reconoce el despido libre o sin causa y, por consiguiente, no regula expresamente el despido por causas empresariales

2. La relativa similitud apuntada anteriormente que podía haber entre los países europeos a la hora de establecer la definición de las causas se desvanece cuando hablamos del ámbito (empresa vs. centro de trabajo) en el que deben concurrir dichas causas. **Alemania**, **Bélgica** y **Grecia** permiten el despido en cualquier ámbito. Por el contrario, **Francia e Italia** solo lo permiten si la causa concurre a nivel de empresa. Finalmente, en **España y Portugal**, las causas económicas deben concurrir a nivel empresarial, mientras que el resto pueden hacerlo también a nivel de centro de trabajo o unidad productiva.

En este punto también existen dos patrones entre los países de centro y Suramérica sometidos a comparación que regulan el fenómeno. En primer lugar, el **ordenamiento argentino** establece que las causas económicas deben concurrir a nivel de empresa. Por su parte, en los demás países que desarrollan la cuestión (**Chile, Colombia** y **República Dominicana**), las causas pueden concurrir bien a nivel de empresa o de la respectiva dependencia en donde tiene lugar la ejecución del trabajo. En términos generales se puede afirmar, de acuerdo con los reportes recolectados, que la cuestión adolece de cierto de nivel de indeterminación.

3. En cuanto a la **regulación del procedimiento de despido por causas empresariales** podemos apreciar que hay una **gran disparidad entre regímenes jurídicos**.

Todos los países europeos establecen un procedimiento que regula los despidos colectivos. Esto es debido a la **Directiva 98/59/CE** del Consejo, de 20 de julio de 1998, relativa a la aproximación de las legislaciones de los Estados Miembros que se refieren a los despidos colectivos. Las **similitudes más relevantes** son: la utilización de umbrales numéricos y temporales para determinar la naturaleza colectiva o individual del despido; la perceptiva participación de los representantes de los trabajadores; y la participación de la autoridad pública en el procedimiento.

A partir de estas tres premisas, sin embargo, cada país contempla unos procedimientos diferentes, siendo unos más protectores y otros más laxos. Por poner una serie de ejemplos, los países que parecen tener un procedimiento colectivo más protector con los trabajadores son **Bélgica** e **Italia**. En **Bélgica**, tras un periodo de negociaciones de 30 días, si las objeciones de los sindicatos están justificadas en algún tema procedimental, el empresario debe volver a iniciar el periodo de consultas. Asimismo, en **Italia**, en caso de que no haya acuerdo en una primera fase, se abre una segunda en la que las partes están obligadas a acudir a una conciliación administrativa para llegar a un acuerdo.

En cuanto a la participación de la administración en los procedimientos colectivos, es cierto que en todos los países la autoridad laboral forma parte del procedimiento, sin

embargo, excepto en **Italia** (donde puede tener un rol activo en caso de desacuerdo en el periodo de consultas), cuenta con funciones de notificación y supervisión del procedimiento.

Finalmente, conviene destacar que **todos los países europeos** permiten que el empresario termine adoptando la **decisión de despido de forma unilateral**, tras cumplir con el pertinente procedimiento.

En relación con los **países analizados del centro y sur de América**, el estudio permite determinar diversos diseños institucionales relacionados con la materia, los cuales pueden ser agrupados en tres patrones a partir de ciertas similitudes relacionadas.

En primer término, en **Colombia** y **República Dominicana** existe la obligación de obtener autorización administrativa para efectos de proceder al despido basado en causas empresariales, y el procedimiento se concreta en: (i) la presentación de una solicitud por parte del empleador, (ii) la verificación del supuesto fáctico en que ésta se sustenta y (iii) el otorgamiento de la autorización. Aun cuando en el régimen **argentino** también se exige la iniciación de un trámite administrativo, existen particularidades destacables para diferenciar este sistema de los demás: (i) el procedimiento contempla la obligación patronal de promover "*ayudas para la creación de emprendimientos productivos*" a favor de los trabajadores eventualmente afectados por la separación del empleo; y (ii) es el único sistema en la región que utiliza el dialogo social como forma de solución de las controversias relativas a la materia. Así, las normas que regulan el trámite establecen una etapa de discusión para las partes, con la posibilidad de terminar el conflicto a través de acuerdo.

Una segunda tendencia se encuentra en **Chile**, donde el procedimiento cumple exclusivamente fines de publicidad, en tanto permite al trabajador y a la Inspección del trabajo conocer el hecho del despido y las causas que lo justifican.

Finalmente, se encuentran los ordenamientos de **Brasil**, **Costa Rica** y **Uruguay**, donde la decisión de despido, adoptada con fundamento en cualquier circunstancia, genera la obligación de indemnizar, luego no existe obligación de adelantar ningún proceso para proceder a la terminación.

4. En referencia al cálculo de trabajadores afectados para determinar si se debe seguir un procedimiento colectivo o individual, cada país tiene sus peculiaridades.

En **Europa**, estas particularidades, en virtud de la anteriormente mencionada Directiva 98/59/CE, giran en torno a dos ejes: un período de referencia y un límite cuantitativo. Es

decir, todos los países establecen un periodo de referencia en el que se computa el número de despidos efectuados. La determinación del período de referencia y el límite cuantitativo es lo que varía de unos países a otros, aunque se dan pequeñas coincidencias. Por ejemplo, el periodo de referencia más corto lo encontramos en **Alemania**, **Francia** y **Grecia**, donde es de 30 días; en puntos intermedios tenemos a **Bélgica** (60 días) y **Portugal** junto con **España** (90 días); al extremo se sitúa **Italia** con 120 días. Por otro lado, en cuanto a los parámetros cuantitativos, cada país establece sus valores, aunque, excepto en **Italia**, todos los países europeos establecen los parámetros en función del número de trabajadores que tiene la empresa.

En cuanto a la cuestión acerca de la unidad de cómputo y las extinciones a tomar en consideración en el periodo de referencia, solamente en el **ordenamiento jurídico español** las sentencias del Tribunal de Justicia de la Unión Europea de 13.5.2015 (C-392/13, asunto Rabal Cañas), 11.11.2015 (C-422/14, asunto Pujante Rivera) y 21.9.2017 (C-429/16, asunto Ciupa y C-149/16, asunto Socha) parecen haber tenido un fuerte impacto en la interpretación de la normativa sobre despidos colectivos. A modo de ejemplo, la regulación de **Portugal** solo toma en consideración los despidos por causas empresariales y las extinciones de mutuo acuerdo.

En Latinoamérica, el único país de la región en donde existe regulación del despido colectivo (y por ende de los umbrales cualitativos que determinan su procedencia) es **Colombia.** En dicho ordenamiento, la definición se adopta a partir de dos variables: (i) el tamaño de la empresa (determinado en función del número de trabajadores) y (ii) el número de empleados afectados con la decisión de terminación. Así, a mayor tamaño de la unidad productiva, una menor proporción de trabajadores despedidos es requerida para efectos de la calificación del despido como colectivo.

5. Al evaluar los **grupos de trabajadores con preferencia de permanencia** en la empresa ante un despido empresarial volvemos a encontrar **grandes divergencias** entre los distintos ordenamientos jurídicos analizados.

En primer lugar, conviene destacar que **todos los ordenamientos jurídicos europeos** analizados **prohíben despedir a empleados por razones discriminatorias**. Solo hay preferencia de permanencia *stricto sensu* en **España** con los representantes de los trabajadores y en **Italia** respecto las madres trabajadoras. En ambos casos solo se permite el despido en caso de fin de la actividad empresarial. **Alemania**, **Francia**, **Grecia** e **Italia**, establecen la obligación de tener en cuenta la situación de los trabajadores a la hora de seleccionar a los que van a ser despedidos. En **Alemania** y **Grecia** esta decisión debe tomarse en función de factores sociales y de acuerdo con la buena fe, respectivamente. Mientras que las empresas en **Italia** y **Francia** deben seguir

criterios relacionados con responsabilidades familiares, antigüedad, discapacidades, etc. **Portugal** y **España** determinan una protección adicional en función de la situación personal del trabajador; en **Portugal**, por ejemplo, si el despido afecta a una trabajadora en baja por maternidad se requiere el informe de la Comisión para la Igualdad en el Trabajo y el Empleo; en España, el despido se considerará nulo si la decisión se ha tomado por la especial situación personal de la trabajadora. Por último, **Bélgica** no prevé ninguna prioridad, solo que el procedimiento para despedir a un representante de los trabajadores requiere que se ponga el caso en la agenda del Comité Laboral competente que debe decidir sobre la concurrencia de las causas y, posteriormente, el representante de los trabajadores debe acudir al presidente del tribunal laboral para que reconozca la existencia de tales causas.

En todos los países sur y centroamericanos analizados existe la precitada prioridad, aunque ella se relaciona con las reglas laborales generales, en virtud de las cuales se concede protección a determinados grupos de trabajadores frente a la decisión de despido (cualquiera que sea la causa en que se funde). Dentro de los trabajadores que generalmente gozan de mayor protección se incluyen las trabajadoras en estado de embarazo (y con posterioridad al alumbramiento), los trabajadores bajo específicas circunstancias de orden familiar o los representantes sindicales. Otra de las características que se reportan con mayor frecuencia es la garantía de los principios de igualdad y no discriminación.

Sin embargo, específicamente en el contexto del despido por causas empresariales destacan: la regulación **argentina**, donde existe un orden de preeminencia para el caso específico del despido fundado en la reducción del volumen del trabajo, el cual se define a partir de la antigüedad en el puesto de trabajo y del volumen de responsabilidades familiares de los trabajadores; la **chilena,** que prohíbe expresamente el despido de trabajadores en situación de enfermedad común, profesional o accidente de trabajo; la regulación del empleo público en **Costa Rica**, que define criterios indeterminados de selección; y, finalmente, la **dominicana**, que establece una categorización a partir de la nacionalidad y del estado civil.

6. En la **práctica totalidad de ordenamientos jurídicos** analizados se reconoce una indemnización económica a los trabajadores afectados por un despido por causas empresariales.

Entre los **países europeos**, existe una práctica unanimidad a la hora de reconocer a los trabajadores una indemnización por despido por causas empresariales. La unanimidad la quiebra **Alemania**, donde solo hay indemnización en caso de despido improcedente. La forma de determinar esta indemnización es diferente en todos los países. Sin embargo,

en la mayoría de los casos se basa en dos variables: el salario y la antigüedad del trabajador.

Similarmente, **en todos los países de centro y Suramérica**, surge el derecho al reconocimiento y pago de una compensación económica a favor del trabajador afectado por el despido bajo la causa que se estudia. No obstante, en la **mayoría de los casos** la procedencia de la indemnización deviene del acto mismo del despido, no de su origen o conexión con causas empresariales. De allí, la fijación del monto depende de las reglas establecidas para el despido injustificado. De esta tendencia general se apartan los sistemas **argentino** y **chileno**, que establecen un valor diferente de la indemnización que se impone en el caso del despido injustificado cuando se alegan razones empresariales como circunstancia extintiva. Un diseño institucional similar existe en **República Dominicana**, en donde el valor de la compensación varía en función de la antigüedad del trabajador.

En **Canadá** solo se reconoce una indemnización si no se respeta el preaviso en el despido y en casos donde el trabajador tenga una antigüedad superior a 5 años.

7. Además de las obligaciones derivadas del procedimiento colectivo analizadas en la pregunta 3, algunos países estipulan unas **obligaciones adicionales**.

Los Planes de despido colectivo son una realidad en ciertos **países europeos**: mientras que en **Bélgica** no son perceptivos, sí lo son en **Francia** si el despido por causas empresariales afecta a más de 10 trabajadores. En **España** se debe hacer un plan de recolocación externa (esto es, un plan contratado con una empresa externa con medidas que faciliten que el trabajador encuentre un nuevo puesto de trabajo) en caso de que el despido afecte a más de 50 trabajadores, mientras que en **Bélgica** es obligatorio si afecta a trabajadores de más de 45 años. En **España**, el plan de recolocación externa es diferente al plan del despido colectivo, ya que el primero debe contratarse con una empresa externa mientras que el segundo son medidas concedidas por la misma empresa. Además, se debe hacer una contribución especial a la Tesorería General de la Seguridad Social si el despido afecta a trabajadores mayores de 50 años. Esta especial contribución también se debe hacer en **Italia**, independientemente de la edad de los trabajadores despedidos.

Es necesario apuntar que solo **Bélgica** y **España** son los únicos países europeos analizados que no tienen una obligación de recolocar al trabajador. En el resto de los países europeos analizados se configura de forma diferente, pero el resultado es el mismo. En **Alemania** y **Grecia**, por ejemplo, el despido se ve como una *ultima ratio*, por lo que el empresario debe tomar todas las medidas que estén a su alcance para

impedir el mismo, incluyendo, por tanto, la recolocación de los trabajadores; mientras que **Francia** reconoce expresamente el derecho a la recolocación de los trabajadores afectados por el despido.

La situación es la contraria en **los países de centro y Suramérica** analizados. En la **mayoría de los países**, no existe regulación legal que imponga obligaciones adicionales al empleador como consecuencia del despido por causas empresariales, diferente del pago de la compensación económica descrita anteriormente. En particular, **ninguno de los sistemas jurídicos contempla la obligación de reinstalación del trabajador despedido**. Así, en su caso, el origen de dichas obligaciones se encuentra en la negociación colectiva o en reconocimientos unilaterales del empleador por vía de Responsabilidad Social Corporativa.

Las únicas excepciones las constituyen los sistemas legales **colombiano** (en los casos de terminación con motivo de suspensión de actividades o clausura de la empresa) y del **dominicano** (empleo público), en los que se establecen un derecho preferencial de los trabajadores despedidos a ocupar posiciones de trabajo si éstas volviesen a estar disponibles.

8. Todos los **países europeos** analizados prevén consecuencias punitivas para las empresas que no cumplen con los procedimientos establecidos. Como en todo, no obstante, las consecuencias varían. Mayoritariamente, se trata de sanciones económicas basadas en compensaciones al trabajador. Sin embargo, en algunos casos se prevé la nulidad y la obligación de reintegrar al trabajador en la empresa. Esto último sucede en países como **Alemania**, **España**, **Grecia** e **Italia**. En **Bélgica** y **Portugal** el trabajador tiene la posibilidad de escoger entre la restitución o la compensación económica. Conviene señalar también que, en **Italia**, debido a las recientes reformas laborales, las consecuencias del incumplimiento empresarial van a ser diferentes dependiendo de si el trabajador ha sido contratado antes o después del 7 de marzo de 2015.

Excluyendo a los **países de centro y Suramérica** que no establecen una regulación específica del despido por causas empresariales (**Brasil, Costa Rica** y **Uruguay**), los sistemas pueden ser agrupados en dos grupos: (i) aquellos en los que el incumplimiento genera la imposición de sanciones de orden económico y administrativo (**Argentina** y **Chile**) y (ii) aquellos en los que la misma desencadena en la nulidad del despido (**Colombia** y **República Dominicana**). Lo anterior sin perjuicio de que en países del primer grupo también existan consecuencias similares a la nulidad, o que en países del segundo grupo se impongan, además, sanciones administrativas o económicas. Así, en **Chile**, por ejemplo, pueda predicarse la ineficacia de un despido cuando las causas empresariales concurran con otras circunstancias, o en **Colombia**, en el que además de

la nulidad, también proceden sanciones de orden económico. Ahora, en adición a las sanciones que se presentan con mayor frecuencia para este tipo de conducta empresarial (apercebimientos, recargos sobre las compensaciones económicas, multas, entre otros), es de resaltar la regulación **argentina**, donde la inobservancia de la obligación que se estudia genera la inhabilitación del empleador para participar en procesos de licitaciones públicas.

9. Más allá de los parámetros numéricos del despido colectivo, los regímenes jurídicos analizados establecen **pocas especialidades para los despidos por causas empresariales para microempresas y/o pequeñas y medianas empresas**.

En Europa, las dos especialidades más pronunciadas se registran en: **Francia**, dónde el empleador debe proponer al trabajador un contrato de seguro profesional si se trata de una empresa de menos de 1.000 trabajadores; y **Portugal**, donde las pequeñas empresas se pueden oponer a la reintegración del trabajador en caso de que este haya elegido tal opción en vez de optar por la compensación económica.

Similarmente**, ninguno de los países de centro y Suramérica** establecen regulaciones específicas en caso de despidos por razones empresariales en el caso de microempresas y PYMES. La única excepción se encuentra en el ordenamiento **argentino**, donde el Estado está facultado para otorgar protección a los trabajadores de dichas empresas, bien asumiendo total o parcialmente las indemnizaciones respectivas, o financiando acciones de capacitación y reconversión.

10. Por último, en **la mayoría de los países** analizados **no es posible realizar un despido por causas empresariales en el sector público**.

La gran mayoría de los **países europeos** no permiten el despido por causas empresariales de trabajadores de la Administración Pública. Esto solo es posible estrictamente en **España** –y también en **Canadá**. En **Italia** se permite el despido objetivo si el motivo del despido es imputable al trabajador y en **Grecia** solo si el puesto de trabajo es eliminado.

Similarmente, en la gran mayoría de ordenamientos de **Sur y Centroamérica** no se aplican las disposiciones relativas al **despido colectivo**, ni su origen en razones empresariales, en el ámbito de las relaciones laborales con la Administración Pública. La razón está generalmente determinada por la regulación de la extinción de dichos vínculos a través de fórmulas legales diferentes al despido. No obstante, en los países centroamericanos que forman parte del estudio se ha reportado la existencia de fenómenos similares, aunque con diferentes denominaciones. Así en la **República**

Dominicana los puestos de trabajo pueden ser objeto de supresión con fundamento en razones de interés institucional, mientras que en **Costa Rica** se plantea un supuesto fáctico con mayor nivel de especificidad (*reducción forzosa de servicios o de trabajos por falta de fondos*, cuya procedencia exige una afectación de al menos el 75% de la planta de personal).

3. Summary table

3.1. Europe

	Belgium	France	Germany	Greece	Italy	Portugal	Spain
1. How are the causes that justify a redundancy due to business reasons defined?	Economic and technical reasons.	Economic, technical, organisational reasons and cessation of activity.	Elimination employment opportunity.	No legal definition.	Economic, organisational and productive reasons.	Market, structural, technological reasons and closing of a sector of the company.	Economic, technical, organisational and productive reasons.
2. The business reasons that justifying the dismissal, must they concur in the entire company or only concur in the workplace where dismissal occurs?	Any business unit with autonomy and independence, unless "manifestly" unreasonable.	Company.	Company or workplace.	No specific provision; decision case by case.	Company.	Structural causes: company. Other causes: workplace.	Economic causes: company; Other causes: workplace.
3. What is the procedure that the company must follow to conduct a dismissal for business reasons?	(i) Non-protected employees: no special procedure. (ii) Protected	(i) Individual dismissal: preliminary interview, written notice and inform	(i) Individual dismissal: consultation workers' representatives. (ii) Collective	(i) Individual dismissal: written notice, severance pay. (ii) Collective dismissal:	(i) Individual dismissal: written notice and conciliation. (ii) Collective dismissal:	(i) Individual dismissal: notification workers' representative, workers and	(i) Individual dismissal: written communication, notice and severance pay

Are there specialties in such procedure in cases of redundancies (that is, when there is a collective dismissal)?	employees: special procedure. (iii) Collective dismissal: consultation workers' representatives; public announcement, objection period and procedural corrections. (iv) Collective dismissal with cessation activity: procedural specialities. Employer´s unilateral decision.	labour administration. (ii) Collective dismissal: consultation workers' representatives. Employer´s unilateral decision.	dismissal: consultation workers' representatives and notification Agency of Employment. Employer´s unilateral decision.	consultation workers' representatives, communication Works Council. If no agreement: employer´s unilateral decision. After 60 days: effective dismissals.	communication and consultation labour unions. Absence agreement: administrative conciliation. Employer´s unilateral decision.	union; grounded opinion; notification employee and labor authority. (ii) Collective dismissal: consultation workers' representatives and labour authority. Employer´s unilateral decision.	(ii) Collective dismissal: consultation workers' representatives and notification labour authority. Employer´s unilateral decision.
4. How is the number of affected workers calculated in order to determine the individual or collective nature of the dismissal?	60-day period affects: 10 workers, company 20 - 99 workers; 10% workers, company 100 -	30-day period affects: 2 - 9 workers; ≥ 10 workers. Terminations of the contract included: all	30-day period affects: > 5 workers, companies 20 -59 workers; 10% or ≥ 25 workers, companies 60 -	30-day period affects: > 6 workers, companies 20 - 149 workers; 5% workers, companies ≥ 150	120-day period affects: ≥ 5 workers, company ≥ 15 employees. Employer access Extraordinary Wages Guarantee	3-month period affects: > 2 workers (micro/small company); > 5 workers (medium/large	90-day period affects: 10 workers, company < 100; 10% workers, company 100 - 300 workers;

	299 workers; 30 workers, company > 300 workers. Special compensation: 10% workers, company > 60. 6 workers, company 20 - 59 workers.	forms.	499 workers. 30 workers, companies ≥ 500 workers.	workers. Terminations of the contract included: (i) dismissals produced at the initiative of the employer; (ii) no fixed-term terminations.	Fund: dismissal always collective.	company). Terminations of the contract included: (i) dismissal due to business reasons (law); (ii) mutual agreement terminations (case-law).	30 workers, company > 300 workers. Twofold count: 1st: company 2nd: workplace (when > 20 workers) Terminations of the contract included: (i) terminations unrelated with the worker; (ii) no fixed-term terminations.
5. Are there groups of workers who have priority in a dismissal for business reasons? **Particularly, do workers´ representatives have priority?** **And pregnant workers?** **Elder workers?**	No. Dismissal workers' representatives: more complex procedure.	Obligation to include selection criteria of affected workers. Collective agreement or employer unilaterally. Variables to consider: number of	Selection based on social factors.	No legal selection criteria. Case-law: good faith principle. Employees protected by legal provisions.	Yes. Selection criteria for collective dismissal. Limits dismissal of working women.	No. Additional protection: workers with family responsibilities.	Yes. Workers' representatives. Collective agreement: other priorities or selection criteria.

Workers with family responsibilities?		dependants, seniority, employee situation and skills.					
6. Are workers affected by a dismissal due to business reasons entitled to an economic compensation?	Yes. Severance pay. Additional payments: collective redundancy and closure of company.	Yes. Severance pay: <10 years seniority: 1/4-month salary per year of seniority; >10 years seniority: 1/3-month salary per year of seniority.	No. Yes: socially unjustified or legally invalid dismissal.	Yes. Severance pay, if 1-year seniority. - Without notice: 2 - 12 monthly wages. - With notice: 50% former compensation.	Yes. Severance pay: annual salary / 13,5.	Yes. Severance pay: 12 days salary and seniority payments.	Yes. Severance pay: 20 days salary per year of service, maximum 12 monthly payments.
7. What obligations does the company that carries out a dismissal due to business reasons have? **In particular, is there the obligation to relocate affected workers within the**	Employer obligations: - Social plan (not legally obliged); - Outplacement counselling (workers > 45 years old); - Employment Cell	Employer obligations: - company >50 workers: redundancy plan. Reemployment limited to France.	Employer obligations: - Relocation priority.	Employer obligations: - Relocation priority.	Employer obligations: - Contribution to Social Security; - Relocation of workers.	Employer obligations: - 2 days per week time credit for affected workers. - Relocation priority.	Employer obligations: - Collective redundancy >50 workers: external relocation plan. - affected workers > 50 years: financial contribution to

company or the group of companies?							Treasury. - No relocation priority.
8. What are the consequences that arise from breach or non-compliance with the legal procedure regarding dismissal due to business reasons? **In which cases is the dismissal considered null (that is, that implies the worker´s readmission)?**	(i) Collective redundancies (breach procedure of information and consultation). Consequences: administrative fine, worker reintegration or compensation, suspension of procedure. (ii) Closure enterprise (breach obligation information): penal or administrative fine.	Unfair dismissal (absence cause, breach procedure, breach rehiring priority): compensation. Null and void dismissal (no validation redundancy plan): judge determines reinstatement or compensation.	Unfair dismissal (breach procedure, socially unjustified, legally invalid) Consequences: invalid dismissal.	Collective dismissal (breach of law or abusive): null and void. Consequences: default wages and readmission of employee	(i) Individual dismissal (unwritten dismissal, absence cause): - hired before March 2015: reinstatement and/or compensation. - hired after: compensation. (ii) Collective dismissal - hired before March 2015 (violation selection criteria, breach procedure): reinstatement and/or compensation. (ii) hired after: compensation.	Unlawful dismissal (breach procedure, absence cause, discriminatory). Employee's choice: reinstatement. or indemnity for damages.	(i) Individual dismissal: unfair dismissal (breach procedure or absence cause) (reinstatement or severance pay 33 days salary, max. 24 months); discriminatory dismissal: nullity (reinstatement and unpaid wages). (i) Collective dismissal: (i) absence of cause: unfair dismissal; (ii) discriminatory, breach procedure or fraudulent: nullity.

9. Are there specialties in the dismissal due to business reasons for micro companies and/or small and medium enterprises?	Yes. Collective dismissals regulation: companies > 20 employees. Companies < 20: no special protection workers.	No. Peculiarity: companies < 1.000 employees: employer obligation to suggest the employee a professional securing contract.	Yes. Protection against dismissal only applicable company >10 employees.	No.	No.	Yes. Peculiarities: (i) Closure small company: no obligation collective redundancy procedure. (ii) Possibility to refuse employee reinstatement.	No. Peculiarity: reduced consultation period (maximum 15 days) companies < 50 employees.
10. Is it possible to conduct a dismissal due to business reasons in a public administration? **In this case, what specialties exist in regard to the definition of the business causes?**	No.	No.	No.	Yes. Dismissal civil servants if positions are abolished.	Yes. Dismissal referred to circumstances inherent to the worker.	No.	Yes. Same definitions of business cases as in the private sector.

3.2. Latin America

	Argentina	Brazil	Chile	Colombia	Costa Rica	Dominican Republic	Uruguay
1. How are the causes that justify a redundancy due to business reasons defined?	Force majeur, lack or reduction of work, technological, market and organizational reasons. Restricted application of *force majeure* and reduction of work as causes of dismissal.	N/A	Economic, financial or technological reasons, company liquidation.	Entrepreneurial changes (technic, production, economic or operational), restructuring, suspension activities > 120 days and closure company.	No legal definition.	Deplotion of raw materials (extractive industry), company liquidation and reorganization.	No legal definition.
2. The business reasons that justifying the dismissal, must they concur in the entire company or only concur in the workplace where dismissal occurs?	Company.	N/A	Company or workplace.	Company or workplace.	N/A	Company or workplace.	N/A
3. What is the procedure that	(i) Initiation procedure	Record of dismissals.	Difference procedure	Administrative authorization:	No regulation. Dismissal for	Dismissal based on closing-down:	No legal regulation.

the company must follow to conduct a dismissal for business reasons? **Are there specialties in such procedure in cases of redundancies (that is, when there is a collective dismissal)?**	employees or union request or *ex officio* by Labor Ministry. (ii) Absence agreement: consultation period. Previous administrative procedure. Once the request is filed: prohibition dismiss workers and go on strike.	Employer unilateral decision to dismiss: severance pay.	depending on the cause: (i) Business reasons: - Written notice 30 days or. payment economic compensation - Dismissal communication labor inspection - Letter of dismissal (include explanation causes) + obligation severance pay. Breach procedure: administrative sanctions and unjustified dismissal. ii) Company liquidation - Written notice 6 days after notification	closure company, except "fortuitous event" or "force majeure" or judicial declaration of liquidation Labor Ministry: verification cases to deliver authorization. Administrative procedure: suspension.	business reasons: employer unilateral decision. Particularities are derived from collective agreements. Administrative procedure: suspension.	administrative authorization. Procedure: (i) Request labor authorities and documentary evidence. (ii) Authority verifies alleged reasons. (iii) Delivery authorization. Permission for suspension: similar grounds No special features in case of redundancy.	

			decision of liquidation. - Dismissal communication labor inspection. - Payment severance pay. Breach procedure: administrative sanctions.				
4. How is the number of affected workers calculated in order to determine the individual or collective nature of the dismissal?	Percentage calculated taking into account all workers in the company. General guidelines; according to circumstances.	N/A	N/A	6-months period affects: 30% workers, company 10-50 workers; 20% workers, company 50-100 workers; 15% workers, company 100-200 workers; 9% workers, company 200-500 workers; 7% workers, company 500-1000 workers;	No legal definition.	No legal definition.	N/A

				5% workers, company >1000 workers.			
5. Are there groups of workers who have priority in a dismissal for business reasons? **Particularly, do workers´ representatives have priority?** **And pregnant workers?** **Elder workers?** **Workers with family responsibilities?**	Yes. Criteria: (i) seniority and (ii) family responsibilities Worker representatives, pregnant workers and post birth, married workers (prior and post weeding): prohibition dismissal.	No. Employees protected by legal provisions.	Yes. -Workers in sick leave (common or professional), or work accident: prohibition dismissal. Employees protected by legal provisions. Exception: pregnant workers dismissed in company liquidation (higher economic compensation).	Yes. Employees protected by legal provisions	Yes (public sector). Criteria: efficiency, seniority and other qualities. No (private enterprises). Employees protected by legal provisions Respect equality and prohibition discrimination.	No. Respect equality and prohibition discrimination. Dismissal economic reasons: ranking of preferences.	No. Respect equality and prohibition discrimination. Collective agreement: selection criteria. Employees protected by legal provisions.
6. Are workers affected by a dismissal due to business reasons entitled to an economic compensation?	Yes. Severance pay: 1-month salary per year or proportional fractions > 3 months.	N/A	Yes. Severance pay: 30 - 300 daily payments. Overpayments: - 30% if the right	Yes. Severance pay: equivalent unjustified dismissal. Small companies	Yes. Severance pay: equivalent disciplinary subjective reasons.	Yes. Severance pay: seniority 3-6 months = 5 days of salary Seniority 6	Yes. Severance pay: equivalent unjustified dismissal.

	Maximum: 3 monthly payments. Compensation calculated on the basis of salary and tenure.		is judicially declared. - Until a 150% extra, if the compensation is not paid in time.	(taxable assets < 1000 minimum salaries) = 50% severance.	Applicable public sector.	months = 10 days of salary. Seniority > 1 year = 15 days of salary (per year).	
7. What obligations does the company that carries out a dismissal due to business reasons have? **In particular, is there the obligation to relocate affected workers within the company or the group of companies?**	Employer obligations redundancy: - Additional entitlements are to be agreed - No obligation of relocation.	N/A	Employer obligations redundancy: - No obligation of relocation.	Employer obligations redundancy: - Preferential right of reincorporation if the company re-opens (after suspension or closing-down). - No obligation of relocation.	Employer obligations redundancy: - Additional entitlements recognized as Corporate Social Responsibility - Public workers: preferential right to occupy the same position arises (if available). - No obligation of relocation.	Employer obligations redundancy: - No obligation of relocation.	Employer obligations redundancy: - No obligation of relocation.
8. What are the consequences that arise from breach or non-compliance with the legal	Warnings, fines, enterprise close-down, disqualification for no compliance with	N/A Nullity: dismissal workers with special protection	Overpayments or payment of salaries. Breach obligations Social Security:	Nullity. Payment salaries and other entitlements.	N/A Nullity and fines: dismissal specially protected workers' or	Nullity: absence causes or breach procedure. Economic compensation.	N/A

procedure regarding dismissal due to business reasons? **In which cases is the dismissal considered null (that is, that implies the worker´s readmission)?**	tender conditions. Sanctions imposed according to seriousness and enterprises records. Nullity: discriminatory dismissal		unjustified dismissal. Nullity: unlawfulness of the dismissal is declared. Breach of fundamental rights in the dismissal: reinstatement or economic compensation (worker's choice).		discriminatory dismissal.		
9. Are there specialties in the dismissal due to business reasons for micro companies and/or small and medium enterprises?	Yes. A public office (*Fondo Nacional de Empleo)* may afford economic compensations, or training for dismissed workers	No.	No.	No.	No.	No.	No.
10. Is it possible to conduct a dismissal due to business reasons in a public	N/A	N/A	No.	No. Concept "dismissal" not applicable public administration.	Yes, in case of administrative reorganization. Insufficient funds: (i)	Yes, in case of "institutional interest".	No. Concept "dismissal" not applicable public administration.

administration? **In this case, what specialties exist in regard to the definition of the business causes?**				Certain groups of workers have special protection.	absolute and (ii) cover > 75% jobs in the same section.		

3.3. North America

	Canada
1. How are the causes that justify a redundancy due to business reasons defined?	No definition causes. Dismissal without cause, except protection Bargaining Agreement and Union s certified of the dismissal.
2. The business reasons that justifying the dismissal, must they concur in the entire company or only concur in the workplace where dismissal occurs?	Employers are entitled to dismiss employees in any part of the company
3. What is the procedure that the company must follow to conduct a dismissal for business reasons? **Are there specialties in such procedure in cases of redundancies (that is, when there is a collective dismissal)?**	(i) Common Law: no procedure: (a) reasonable notice/pay in lieu of notice and (b) good faith. (ii) Minimum Standards Legislation (MSL): - Notice/pay in lieu of notice. - Mass termination (≥ 50 employees, four-week period): (a) extended notice, (b) information government and workers and (c) joint planning committee. - Federally regulated employees: written reasons for dismissal. (iii) Collective Bargaining Legislation: possible special procedures.
4. How is the number of affected workers calculated in order to determine the individual or collective nature of the dismissal?	Minimum Standards Legislation (MSL): Dismissal ≥ 50 employees, four-week period

5. Are there groups of workers who have priority in a dismissal for business reasons? **Particularly, do workers´ representatives have priority?** **And pregnant workers?** **Elder workers?** **Workers with family responsibilities?**	(i) Common law: total discretion employer (ii) MSL: prohibition discriminatory grounds. (iii) Collective Bargaining Protection: possible special protections.
6. Are workers affected by a dismissal due to business reasons entitled to an economic compensation?	(i) Common law: variable amount depending on whether the dismissal is foreseen in the contract or not. If not, "reasonable" payment. (ii) MSL: one-week notice or pay in lieu of notice per year, maximum of eight weeks. - Mass termination: extension notice. - Severance pay: (a) seniority > 5 years and (b) payroll $2.5 million in the company or permanent discontinuance of employer´s business and ≥ 50 workers dismissed in six-month period. (iii) Employment Insurance Act: 55% of the weekly insurable earnings between 14 and 45 weeks if the worker meets the requirements.
7. What obligations does the company that carries out a dismissal due to business reasons have? **In particular, is there the obligation to relocate affected workers within the company or the group of companies?**	(ii) Mass terminations: advance notice and information dismissals government. (ii) Parties are free to negotiate further obligations, either collectively or individually. (iii) No obligation of relocation.

8. What are the consequences that arise from breach or non-compliance with the legal procedure regarding dismissal due to business reasons? **In which cases is the dismissal considered null (that is, that implies the worker´s readmission)?**	(i) Common Law: absence notice/pay in lieu of notice = wrongful dismissal (compensation for damages) (ii) MSL: absence notice/pay in lieu of notice and ESA claim. Consequence: - A voluntary settlement or - Notice or severance obligations. (iii) Collective Bargaining Law: dismissal without cause = arbitration process. Consequences: - Possible damages. - High seniority or dismissal not for business reasons: reinstatement with back pay.
9. Are there specialties in the dismissal due to business reasons for micro companies and/or small and medium enterprises?	(i) Common Law: no. (ii)) MSL: varies termination and severance entitlements for small firms: - Mass termination only ≥ 50 employees dismissed in 4-week period. - No severance pay if company's payroll < $2.5 million or ≥ 50 employees dismissed in 6-month period due to permanent discontinuance.
10. Is it possible to conduct a dismissal due to business reasons in a public administration? **In this case, what specialties exist in regard to the definition of the business causes?**	Yes. The Crown has the same treatment as a private employer.